



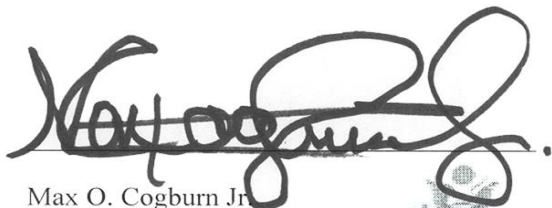
errors in the compilation of the record. For example, if a piece of evidence was presented at the SRV hearing and not included in the record on appeal, the district court has the authority to conform the record to include that evidence.

The rule does not, however, empower this court to add to the record evidence that was not submitted at that hearing. In accordance with Rule 10(e), the party seeking to modify or correct the record must demonstrate that the evidence to be supplemented was *before the lower court* during the proceedings leading to the judgment under review and was mistakenly omitted from the record. Miro v. Plumbers & Pipefitters Nat'l Pension Fund, 2002 WL 31357702, at \*1 (S.D.N.Y. Oct.17, 2002) (citing Schreier v. Weight Watchers Northeast Region, Inc., 872 F.Supp. 1, 3 (E.D.N.Y.1994)). Further, “[i]t is well-settled that the purpose of Rule 10(e) is not to allow a district court to add to the record on appeal matters that did not occur there in the course of proceedings leading to the judgment under review.” Armfield v. Jacobson, 1998 WL 199852, at \*2 (E.D.N.Y. Mar.27, 1998) (quotations and citations omitted). If defendant believes that his attorney failed to discover and produce evidence at the SRV hearing that would have contradicted the testimony of a government witness, he should raise that issue with the appellate court on appeal.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that defendant’s “Motion Pursuant to FRAP Local Rule 10(d) Supplemental Records, Modification, or Correction” (#667) is **DENIED**.

Signed: April 22, 2016

  
Max O. Cogburn Jr.  
United States District Judge